

1 BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2 NANCY KEENAN

3 STATE OF MONTANA

4 * * * * *

5 TRUSTEES, WHEATLAND COUNTY SCHOOL)
6 DISTRICT NO. 16, (HARLOWTON))

7 Appellant,)

DECISION AND ORDER

8 vs.)

 OSPI 178-89

9 LYLE (BUD) COLBY AND CARLA HINAND,)

10 Respondents.)

11 * * * * *

12 STATEMENT OF CASE

13 In the spring of 1988, Lyle Colby accepted a contract with
14 Wheatland County School District No. 16 (Harlowton) (hereinafter
15 referred to as "the District") for the 1988-89 school year as a
16 tenured physical education teacher at a salary of \$10,373.40. In
17 an amendment to the contract, dated August 10, 1988, the District
18 agreed to pay Mr. Colby an additional \$3,060.00 for performing the
19 duties of head girls' and boys' basketball coach. At a special
20 meeting held on March 28, 1988, the Trustees of the District voted
21 to renew Colby's teaching contract for 1989-1990. The Board
22 decided not to renew Colby's contract as head basketball coach.
23 Mr. Colby contends that as a tenured teacher, Section 20-4-203(1),
24 MCA, requires that he be "reelected from year to year
25 . . . as a tenure teacher at the same salary and in the same or

1 comparable position of employment as that provided by the last
2 executed contract with the teacher" unless he is terminated in
3 accordance with the provisions of 20-4-204, MCA. The District
4 offered him a tenured teacher contract for 1989-90 with a salary
5 of \$15,300.00. The salary offer did not include an amount
6 equivalent to the stipends he had received as head girls'
7 basketball coach and as head boys' basketball coach under his 1988-
8 89 amended contract.

9 Mr. Colby appealed the final decision of the Board of Trustees
10 to the Wheatland County Superintendent of Schools on June 27, 1989.
11 The issue on appeal was stated as follows:

12 When teachers are employed as tenured teachers
13 with amendments to their contracts for
14 specific extra curricular duties with
15 accompanying stipends may a school district
16 terminate the extra-duty stipends without
17 complying with the requirements of section 20-
18 4-204, MCA.

19 The County Superintendent rendered Findings of Fact,
20 Conclusions of Law and an Order on August 8, 1989. In her Order,
21 the County Superintendent sent the matter back to the parties to
22 be resolved at level one of the grievance procedure set forth in
23 the collective bargaining agreement between the parties. The
24 parties met after entry of the Order and agreed that it was not
25 possible to address the issues in a grievance procedure at that
point. The District appealed the decision of the County
Superintendent to the State Superintendent in accordance with
Section 20-3-210, MCA.

1 On February 6, 1990, prior to oral argument the St
2 Superintendent received a letter from Carla Hinand dated Febru
3 3, 1990, stating her decision to withdraw as a party to the appe
4 At the oral argument, counsel for Hinand informed the S
5 Superintendent of her client's decision to withdraw as a party
6 the proceeding. No objection was raised by the District.

7 **DECISION AND ORDER**

8 Having reviewed the record, read the briefs of the par
9 and heard oral argument, this Superintendent now makes
10 following decision: The decision and order of the Co
11 Superintendent is effected by error of law. The S
12 Superintendent hereby reverses Conclusions of Law numbers 8,
13 and 16.

14 The appeal was properly before the County Superintend
15 CL#2.

16 The amended contract between Colby and the District prov
17 that he would receive \$10,373.40 as a tenured physical educa
18 teacher and \$3060.00 stipend for coaching the girls' and b
19 basketball team for the 1988-1989 school term. Section 2
20 203(1), MCA, protects the salary of the tenured teacher. Sec
21 20-1-101(18), MCA, defines the word "teacher" and that definiti
22 does not include a coach. Section 20-4-203(1) specifically g
23 tenure to "teachers" and refers to the "last executed contract
24 the teacher." A tenured teacher has a statutory right to cont
25 employment as a tenured teacher. A coach under contract to

1 district must rely on the terms of the employment contract for any
2 expectation of continued employment with the District. Mr. Colby's
3 contract with the District as a coach expired at the end of the
4 1988-89 school term.

5 Therefore, the order of the County Superintendent is hereby
6 vacated and the decision of the District is hereby affirmed.

7 **MEMORANDUM OPINION**

8 Standard of Review

9 The standards for review by the State Superintendent are set
10 forth in 10.6.125, ARM. This rule was modeled upon Section 2-4-
11 704, MCA, and the Montana Supreme Court has interpreted the statute
12 and the rule to mean that agency (County Superintendent) findings
13 of fact are subject to a clearly erroneous standard of review and
14 that conclusions of law are subject to an abuse of discretion
15 standard of review. Harris v. Bauer, ____ Mont. ____, 749 P.2d
16 1068, 1071, 45 St. Rptr. 147, 151, (1988). Further, the petitioner
17 for review bears the burden of showing that they have been
18 prejudiced by a clearly erroneous ruling. Terry v. Board of
19 Regents, 220 Mont. 214, 217, 714 P.2d 151, 153 (1986). Findings
20 are binding and not "clearly erroneous" if supported by
21 "substantial credible evidence in the record." This has been
22 further clarified to mean that a finding is clearly erroneous if
23 a "review of the record leaves the court with the definite and firm
24 conviction that a mistake has been committed."

25 On appeal, the State Superintendent "may reverse or modify

1 the decision if substantial rights of the appellant have been
2 prejudiced."

3 Discussion

4 The County Superintendent having jurisdiction of the appeal
5 was obligated to decide the issues properly before her.

6 Lyle Colby had an amended contract with the District for the
7 1988-1989 school term. The contract required that Colby perform
8 services in two different capacities. First, he was contracted as
9 a tenured physical education teacher. Second, he was contracted
10 as the head basketball coach for both boys' and girls' teams. The
11 County Superintendent correctly concluded that coaches do not
12 achieve tenure under 20-4-203(1), MCA. A school district cannot
13 extend the legislative cloak of tenure to coaching positions by
14 including coaching duties in a tenured teacher's contract with the
15 district.

16 Mr. Colby's reliance on Sorlie v. School District No. 2, 205
17 Mont. 22, 667 P.2d 400, 12 Ed. Law Rptr. 1283, is misplaced.

18 The Supreme Court held that Sorlie was a tenured administrator
19 under 20-4-203(1), MCA. The position she held required that she
20 be a certified "teacher" as defined in 20-1-101(18), MCA.

21 A position as coach does not require that the incumbent have a
22 teaching certificate. Section 20-4-203(1), MCA, requires that a
23 district pay a tenured teacher the same salary in the same or a
24 comparable position of employment as that provided by the last
25 executed contract with the teacher. The word "teacher" as used in

1 20-4-203(1), MCA is defined in 20-1-101(18), MCA. The language of
2 20-4-203(1), MCA, when read as a whole applies to contracts between
3 "teachers" and districts. The fact that one document contains
4 terms providing for services from one person both as a "teacher"
5 and as a coach is not enough to extend salary protection to the
6 amount paid the individual for the coaching services.

7 DATED THIS 5 day of June, 1990.

8
9 Nancy Keenan
NANCY KEENAN

10 CERTIFICATE OF SERVICE

11 THIS IS TO CERTIFY that on the 5th day of June, 1990, a true
12 and exact copy of the foregoing DECISION AND ORDER was mailed,
postage prepaid, to the following:

13 Chadwick H. Smith
14 SMITH LAW FIRM, P.C.
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